

# GUIDE FOR HANDLING STATUS OFFENDER CASES IN FAMILY COURT

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## I. DEFINITION OF “STATUS OFFENSE”

- A “status offense” is “an offense which would not be a misdemeanor or felony if committed by an adult including, but not limited to, incorrigibility or beyond the control of the parents, truancy, running away, playing or loitering in a billiard room, playing a pinball machine, or gaining admission to a theater by false identification.” S.C. Code Ann. § 20-7-6605(8) (Supp. 1996).

## II. IMPLICATIONS OF A CHILD BEING CHARGED WITH A STATUS OFFENSE

- A child charged with a status offense is afforded all due process rights afforded to a child offender.
  - “In a case where the delinquency proceedings may result in commitment to an institution in which the child's freedom is curtailed, the child or the child's parents or guardian must be given written notice with particularity of the specific charge or factual allegations to be considered at the hearing. The notice must be given as soon as practicable and sufficiently in advance to permit preparation. The child or the child's parent or guardian also must be advised in the notice of their right to be represented by counsel and that, if they are unable to employ counsel, counsel will be appointed to represent them. In the hearing, the parent and child also must be expressly informed of their right to counsel and must be specifically required to consider whether they do or do not waive the right of counsel.” S.C. Code Ann. §20-7-7415 (D) (Supp. 1996).
- A child charged with a status offense will have a juvenile record, just like a child charged with a criminal offense. (Unless the record is expunged once the child turns 18.)
- A child's age at the time of his or her first contact with the court system is a major factor considered by DJJ when determining the “Risk Score” for the child. (The Risk Score generally determines the recommendation that DJJ will make to the court in adjudicatory and dispositional hearings and is relied upon by some judges when sentencing a child.)
  - For example, if a 6 year old is charged with truancy and at some point in the future that child has more contact with the court system as a juvenile, his or her risk score will be much higher since he was only 6 when he was first “involved” in the court system. This applies even if the court drops the charges against the child and proceeds against the parent. (As of spring 2004, this is still DJJ policy, but should change with new policy revisions currently being developed.)

### III. OVERVIEW OF THREE MOST COMMON STATUS OFFENSES

#### A. INCORRIGIBILITY or “beyond the control of the parents”

- There is a constant, ongoing problem concerning how to handle these children and what can be done for them. Desperate parents are calling for help and are not getting any answers. Ideally, there should be many alternatives to filing an Incurrigible Petition in Family Court, such as mental health services or community-based programs aimed at helping these children. As truancy is an “Education Issue”, it seems that in many situations, Incorrigibility (when not accompanied by additional criminal charges) is a “Mental Health Issue.” There needs to be a course of action that we can offer to these children’s caretakers...a referral we can make...services that can be provided...a program tailored to meet the needs of these “difficult” children that are giving us signals that something is really wrong, but that it’s not necessarily too late to get them back on track. Unfortunately, there is little to nothing currently in place in the local communities providing support or services for these children and the parents have to wait until the child is charged with a criminal offense before they can get any help, or they are forced to file an Incorrigible Petition to get services through the juvenile justice system.
- When a child is charged with incorrigibility, a guardian should be appointed for the child.
- Though not required by statute, there should be some proof that the child’s guardian attempted to address the child’s behavioral problems through professional counseling before signing a petition against the child.
- If a child is adjudicated delinquent for incorrigibility, the defense attorney for the child should consider asking the court to place the child on probation with a list of probationary terms aimed at assisting the family and child in resolving the problems at issue and which focus on helping to improve the child’s behavior.
  - Probationary terms that can be requested include:
    - family counseling
    - parenting skills classes
    - individual counseling for the child
    - alcohol and drug abuse counseling
    - assessment for medication
    - psychiatric examination
    - assignment of a mentor for the child
- If the court is not inclined to allow the child to return home, a family member or friend of the family may be willing to take temporary custody of the child. In some situations, there may need to be a cooling off period between the child and the parent(s) where the child resides somewhere else in the community (hopefully not jail, just because there are no other options), such as with the non-custodial parent, an aunt or uncle, a grandparent or possibly a group home. During this time, the child and family should participate in individual and family counseling as needed.

## **B. RUNNING AWAY**

- These are difficult cases because when they come to court, judges often feel like their hands are tied. Most people realize that jail is NOT the appropriate place for these children, but the court is faced with being responsible for the child's safety, and if given no alternatives, jail might be the only option for a quick, short-term fix.
- Whether you are the attorney for the child, the prosecutor or the judge, it is important to consider the reasons why the child may have run away. Are you dealing with a difficult, rebellious child who is constantly defying authority? Is the child's safety in the home at issue? Are there other factors causing the runaway behavior? The underlying causes must be determined and the problems addressed in order to truly help the child and the family.
- If it appears that the child was running away from home because she feared for her safety, the parties should consider getting DSS involved. It may be necessary to take the child into emergency protective custody or at least have DSS conduct a home investigation prior to going to court for the runaway charge. In the interim, the judge may consider allowing the child to stay at another family member's home or in a group home (anything but the detention center) while the case is being investigated.
- If the judge is not inclined to allow the child to return home, efforts should be made to determine if there is another family member or friend of the family who is willing and able to take temporary custody of the child while the problems at home are being resolved.
- If the child is adjudicated delinquent for running away, the court has the option of placing the child on probation as an alternative to locking him up or sending him to an evaluation center for 45 days (which is still "locking him up"). Obviously, the judge may need to be convinced that the child is not going to run away again. Following is a list of probationary terms that a defense attorney may want to ask the judge to include in the court order, depending on the circumstances surrounding the case:
  - house arrest with electronic monitoring
  - a DSS home investigation of the child's home or the home where the child will be staying - Make sure that the home investigation is thorough, and if you are aware of anyone that might have important information regarding the child's home environment or living situation, make sure you include in the order that DSS is to interview that person.
  - family counseling
  - individual counseling for the child
  - parenting skills classes for the parents / guardians
- If the child is a repeat runaway, the court should consider ordering DSS and DMH to work together on a treatment plan for the child and the family.

## C. TRUANCY

- Truancy issues are governed by the S.C. Code of Laws §59-65-10 through 260 and the S.C. Code of Regs., R. 43-274.
- Chapter 43 of the SC Code of Regulations governs the State Board of Education and is authorized by S.C. Code Ann. §59-5-60 (1990). R. 43-274 outlines the state requirements for students' school attendance. The revised regulation went into effect November 28, 2003.
- The revised version of S.C. Code Ann. Regs., R. 43-274:
  1. provides a clear definition of truancy;
  2. clarifies intervention requirements in accordance with S.C. Code Ann. §59-65-90;
  3. aligns South Carolina's regulation with the requirements of the JJDP Act of 1974 (42 U.S.C. 5601 et seq.) by clarifying the referral procedure for truants to Family Court for an initial probable cause hearing or violation hearing;
  4. assists in the accurate, consistent, and uniform reporting of the frequency of truancy and processing of truancy cases on a statewide basis; and
  5. contains the following language:

“(t)he State Board of Education recognizes that truancy is primarily an educational issue and that all reasonable, educationally sound, corrective actions should be undertaken by the school district prior to resorting to the juvenile justice system.”

- **R. 43-274 PROVIDES FOR THE FOLLOWING:**

1. **TRUANCY DEFINED:**

- a. Truant: A 6 to 17 year old child who has three consecutive unlawful absences or a total of five unlawful absences.
- b. Habitual Truant: A 12 to 17 year old child who (1) fails to comply with the intervention plan, and (2) accumulates two or more additional unlawful absences.
  - When a child is determined to be a habitual truant, an initial truancy petition may be filed if the child needs intervention by the court.
  - The written intervention plan and documentation of non-compliance with the plan must be attached to the truancy petition requesting court intervention.
- c. Chronic Truant: A 12 to 17 year old who (1) has been through the school intervention process, (2) has reached the level of a habitual truant and has been referred to Family Court and placed on an order to attend school, and (3) continues to accumulate unlawful absences.
  - The chronic truant may be referred to Family Court for violating a previous court order if all community alternatives and referrals failed to remedy the attendance problem.
  - The Contempt of Court petition must be accompanied by (1) all school intervention plans existing to this point for this child and

family, and (2) a written recommendation from the school to the court on action the court should take.

**2. INTERVENTION PLAN** required of school officials by R. 43-274:

- a. Each district must develop a policy relating to requirements for intervention which is in accordance with any applicable statutes.
- b. Once a child is determined to be truant, school officials must make every reasonable effort to meet with the parent(s) / guardian(s) to identify the reasons for the student's continued absence.
  - These efforts should include telephone calls and home visits, both during and after normal business hours, as well as written messages and e-mails.
- c. School officials must work with the student and parent(s) / guardian(s) to develop a written intervention plan to address the student's continued absence.
- d. The intervention plan must include but is not limited to:
  - 1) Designation of a person to lead the intervention team. The team leader may be someone from another agency.
  - 2) Reasons for the unlawful absences.
  - 3) Actions to be taken by the parent(s) / guardian(s) and student to resolve the causes of the unlawful absences.
  - 4) Documentation of referrals to appropriate service providers and, if available, alternative school and community-based programs.
  - 5) Actions to be taken by intervention team members.
  - 6) Actions to be taken if unlawful absences continue.
  - 7) Signature of the parent(s) / guardian(s) or evidence that attempts were made to involve the parents(s) / guardian(s).
  - 8) Documentation of team members' involvement.
  - 9) Guidelines for revising the plan.
- e. School officials may use a team intervention approach. Team members may include representatives from social services, community mental health, substance abuse and prevention, and other persons the district deems appropriate to develop the written intervention plans.

**3. FAMILY COURT REFERRALS / JUDICIAL INTERVENTION**

- a. A child should never be referred to Family Court to be placed on a order to attend school before the school completes of the written intervention planning.
  - 1) A consent order must not be used as an intervention plan from any local school or school district.
  - 2) If the parent(s) / guardian(s) do not cooperate with the intervention planning to remedy the attendance problem, the school district can refer the student to Family Court. S.C. Code Ann. § 59-65-50 (1990). The school also shall file a report for educational neglect



against the parent(s) / guardian(s) with DSS. S.C. Code Ann. § 20-7-490 (2)(c)(Supp. 2002).

b. Petition for a School Attendance Order:

If the intervention plan is not successful and further inquiry by school officials fails to cause the truant student and/or parent(s) / guardian(s) to comply with the written intervention plan or if the student and/or parent(s) / guardian(s) refuses to participate in intervention and the student accumulates two or more additional unlawful absences, the student is considered a “habitual” truant.

- 1) Each referral must include a copy of the plan and specify any corrective action regarding the student and/or the parent(s) or guardian(s) that the district recommends the court adopt as well as any other available programs or alternatives identified by the school district.
- 2) The intervention plan must be attached to the petition to the Family Court and served on the student and the parent(s) / guardian(s).

c. Petition for Contempt of Court

If the student continues to accumulate unlawful absences after the Family Court issued a school attendance order, the student is considered to be a “chronic” truant and school officials may refer the case back to Family Court.

- 1) The school and district must exhaust all reasonable alternatives prior to petitioning the Family Court to hold the student and/or the parent(s) or guardian(s) in contempt of court.
- 2) Any petition for contempt of court must include a written report indicating the corrective actions that were attempted by the school district and what graduated sanctions or alternatives to incarceration are available to the court in the community.
- 3) The school district must include in the written report its recommendation to the court should the student and/or parent(s) or guardian(s) be found in contempt of court.

4. **COORDINATION WITH DJJ** - Each school district should coordinate with the local office of DJJ to establish a system of graduated sanctions and alternatives to incarceration in truancy cases.
5. **REPORTING REQUIREMENTS** -The State Department of Education will develop and implement a standard reporting system for the adequate collection and reporting of truancy rates on a school-by-school basis.
6. **GUIDELINES** – The State Department of Education Guidelines contains additional information relating to the implementation of this regulation. The State Department of Education will review and update these guidelines as needed.

## IV. SC STATUTES

### A. DETENTION OF STATUS OFFENDERS (PRE- ADJUDICATORY)

- **§20-7-72109 (E).** A child who is taken into custody because of a violation of law which would not be a criminal offense under the laws of this State if committed by an adult must not be placed or ordered detained in an adult detention facility. A child who is taken into custody because of a violation of the law which would not be a criminal offense under the laws of this State if committed by an adult must not be placed or ordered detained more than **twenty-four hours** in a juvenile detention facility, unless an order previously has been issued by the court, of which the child has notice and which notifies the child that further violation of the court's order may result in the secure detention of that child in a juvenile detention facility. If a juvenile is ordered detained for violating a valid court order, the juvenile may be held in secure confinement in a juvenile detention facility for not more than **seventy-two hours**, excluding weekends and holidays. However, nothing in this section precludes a law enforcement officer from taking a status offender into custody.

### B. COMMITMENT OF STATUS OFFENDERS (POST ADJUDICATORY)

- **§20-7-7810 (F).** Notwithstanding subsections (A) and (E), a child may be committed to the custody of the Department of Juvenile Justice or to a secure evaluation center operated by the department for a determinate period not to exceed ninety days when:
  - (1) the child has been adjudicated delinquent by a family court judge for a status offense, as defined in Section 20-7-6605, excluding truancy, and the order acknowledges that the child has been afforded all due process rights guaranteed to a child offender;
  - (2) the child is in contempt of court for violation of a court order to attend school or an order issued as a result of the child's adjudication of delinquency for a status offense, as defined in Section 20-7-6605; or
  - (3) the child is determined by the court to have violated the conditions of probation set forth by the court in an order issued as a result of the child's adjudication of delinquency for a status offense, as defined in Section 20-7- 6605, including truancy.Orders issued pursuant to this subsection must acknowledge:
  - (a) that the child has been advised of all due process rights afforded to a child offender; &
  - (b) that the court has received information from the appropriate state or local agency or public entity that has reviewed the facts and circumstances causing the child to be before the court.A child committed under this section may not be confined with a child who has been determined by the department to be violent.

### C. SUSPENSION OR RESTRICTION OF DRIVER'S LICENSE (§20-7-7807)

- (A) If a child is adjudicated delinquent for a status offense or is found in violation of a court order relating to a status offense, the court may suspend or restrict the child's driver's license until the child's seventeenth birthday.
- (C) If the court suspends the child's driver's license, the child must submit the license to the court, and the court shall forward the license to the Department of Public Safety for license

suspension. However, convictions not related to the operation of a motor vehicle shall not result in increased insurance premiums.

(D) If the court restricts the child's driver's license, the court may restrict the child's driving privileges to driving only to and from school or to and from work or as the court considers appropriate. Upon the court restricting a child's driver's license, the child must submit the license to the court and the court shall forward the license to the Department of Public Safety for reissuance of the license with the restriction clearly noted.

(E) Notwithstanding the definition of a 'child' as provided for in Section 20-7-6605, the court may suspend or restrict the driver's license of a child under the age of seventeen until the child's eighteenth birthday if subsection (B) applies.

(F) Upon suspending or restricting a child's driver's license under this section, the family court judge shall complete a form provided by and which must be remitted to the Department of Public Safety.

#### D. LESS COMMON STATUS OFFENSES

- **§20-7-8905. Misrepresentation of age to gain entry to theater.** A minor who gains admission to any theater by falsely claiming to be eighteen years of age or older is guilty of a misdemeanor and, upon conviction, must be fined not more than fifty dollars.
- **§ 20-7-8910. Loitering or playing in billiard room.** It is unlawful for a person under eighteen years of age to loiter in a billiard or pocket billiard room or to play billiards or pocket billiards in a billiard room unless accompanied by the person's parent or guardian or with the written consent of the person's parent or guardian. A person violating this section or Chapter 11 of Title 52 or any billiard room proprietor or manager who permits such a violation must be fined not less than ten nor more than one hundred dollars or be imprisoned not less than two days nor more than thirty days. In the event the keeper of a billiard room is of the opinion that a person desiring admission is under the age of eighteen years the keeper shall require the person to certify the person's age in writing. It is a misdemeanor, punishable by a fine of not less than twenty-five nor more than one hundred dollars, for a minor to make a false certificate of age or use a forged permit from the minor's parent or guardian.
- **§ 20-7-8915. Playing pinball machines.** It is unlawful for a minor under the age of eighteen to play a pinball machine.
- **§ 20-7-8920. Purchase or possession of beer, ale, wine, malt or other fermented beverages.** (§ 20-7-8925. Purchase or possession of alcoholic liquors is the same statute as §20-7-8920. but it pertains to alcoholic liquors instead of beer, ale, wine, malt or other fermented beverages) It is unlawful for a person under the age of twenty-one to purchase or knowingly possess beer, ale, porter, wine, or other similar malt or fermented beverage. Possession is prima facie evidence that it was knowingly possessed. A person violating this section is guilty of a misdemeanor and, upon conviction, must be fined not less than twenty-five dollars nor more than one hundred dollars.

(B) Persons eighteen years of age and over lawfully employed to serve or remove beer, wine, or alcoholic beverages in establishments licensed to sell these beverages are not considered to be in unlawful possession of the beverages during the course and scope of their duties as an employee. The provisions of this subsection do not affect the requirement

that a bartender must be at least twenty-one years of age.

(C) This section does not apply to any employee lawfully engaged in the sale or delivery of these beverages in an unopened container.

(D) The provisions of this section do not apply to a student who:

- a) is eighteen years of age or older;
- b) is enrolled in an accredited college or university and a student in a culinary course which has been approved through review by the State Commission on Higher Education;
- c) is required to taste, but not consume or imbibe, any beer, ale, porter, wine, or other similar malt or fermented beverage as part of the required curriculum; &
- d) tastes a beverage pursuant to item (3) only for instructional purposes during classes that are part of the curriculum of the accredited college or university.

The beverage must at all times remain in the possession and control of an authorized instructor of the college or university who must be twenty-one years of age or older.

Nothing in this subsection shall be construed to allow a student under the age of twenty-one to receive any beer, ale, porter, wine, or other similar malt or fermented beverage unless the beverage is delivered as part of the student's required curriculum and the beverage is used only for instructional purposes during classes conducted pursuant to the curriculum.

#### E. COMPULSORY ATTENDANCE LAWS

- **§ 59-65-10. Responsibility of parent or guardian; notification by school district of availability of kindergarten; transportation for kindergarten pupils.**

(A) All parents or guardians shall cause their children or wards to attend regularly a public or private school or kindergarten of this State which has been approved by the State Board of Education or a member school of the South Carolina Independent Schools' Association or some similar organization, or a parochial, denominational, or church-related school, or other programs which have been approved by the State Board of Education from the school year in which the child or ward is five years of age before September first until the child or ward attains his seventeenth birthday or graduates from high school. A parent or guardian whose child or ward is not six years of age on or before the first day of September of a particular school year may elect for their child or ward not to attend kindergarten. For this purpose, the parent or guardian shall sign a written document making the election with the governing body of the school district in which the parent or guardian resides. The form of this written document must be prescribed by regulation of the Department of Education. Upon the written election being executed, that child or ward may not be required to attend kindergarten.

(B) Each school district shall provide transportation to and from public school for all pupils enrolled in public kindergarten classes who request the transportation. Regulations of the State Board of Education governing the operation of school buses shall apply.

- **§ 59-65-20. Penalty for failure to enroll or cause child to attend school.**

Any parent or guardian who neglects to enroll his child or ward or refuses to make such child or ward attend school shall, upon conviction, be finned not more than fifty dollars or be imprisoned not more than thirty days; each day's absence shall constitute a separate offense; provided, the court may in its discretion suspend the sentence of anyone convicted of the provisions of this article.

- **§ 59-65-30. Exceptions.** The provisions of this article do not apply to:
  - (a) A child who has been graduated from high school or has received the equivalent of a high school education from a school approved by the State Board of Education, or member school of South Carolina Independent Schools' Association, or a private school in existence at the time of the passage of this article;
  - (b) A child who obtains a certificate from a psychologist certified by the State Department of Education or from a licensed physician stating that he is unable to attend school because of a physical or mental disability, provided there are no suitable special classes available for such child in the school district where he resides;
  - (c) A child who has completed the eighth grade and who is determined by the court to be legally and gainfully employed whose employment is further determined by such court to be necessary for the maintenance of his home;
  - (e) A student who has a child and who is granted a temporary waiver from attendance by the district's attendance supervisor or his designee. The district attendance supervisor may grant a temporary waiver only if he determines that suitable day care is unavailable. The student must consult with the district supervisor or his designee in a timely manner to consider all available day care options or the district shall consider the student to be in violation of this chapter.
  - (f) A child who has reached the age of sixteen years and whose further attendance in school, vocational school, or available special classes is determined by a court of competent jurisdiction to be disruptive to the educational program of the school, unproductive of further learning, or not in the best interest of the child, and who is authorized by the court to enter into suitable gainful employment under the supervision of the court until age seventeen is attained. However, prior to being exempted from the provisions of this article, the court may first require that the child concerned be examined physically and tested mentally to assist the court to determine whether or not gainful employment would be more suitable for the child than continued attendance in school. The examination and testing must be conducted by the Department of Youth Services or by any local agency which the court determines to be appropriate. The court shall revoke the exemption provided in this item upon a finding that the child fails to continue in his employment until reaching the age of seventeen years.
  
- **§ 59-65-50. Nonattendance reported to court having jurisdiction of juveniles.** If the board of trustees of a school district or its designee is unable to obtain the school attendance of a child in the age group specified in § 59-65-10, the board or its designee shall report such nonattendance in writing to the juvenile court or such other court in the county as may have jurisdiction of juveniles but exclusive of magistrate's courts notwithstanding the provisions of § 22-3-540; *provided*, that no one except the board of trustees or its designee shall have the authority to institute the proceedings herein.
  
- **§ 59-65-60. Procedure upon receipt by court of report of nonattendance.**
  - (a) Upon receipt of such report, the court may forthwith order the appearance before such court of the responsible parent or guardian and if it deems necessary, the minor involved, for such action as the court may deem necessary to carry out the provisions of this article.
  - (b) The court may, after hearing upon ten days notice, order such parent or guardian to

require such child to attend school and upon failure of such parent to comply with such order may punish such parent or guardian as by contempt, *provided*, that punishment for such contempt cannot exceed fifty dollars or thirty days imprisonment for each offense. The procedure herein provided shall be alternative to the penalties provided in § 59-65-20.

- **§59-65-70. Court empowered to declare child delinquent.**

If the court determines that the reported absence occurred without the knowledge, consent or connivance of the responsible parent or guardian or that a bona fide attempt has been made to control and keep the child in school, the court may declare such child to be a delinquent and subject to the provisions of law in such cases.

- **§ 59-65-260. Duties of attendance supervisor relating to nonattending children.**

The attendance supervisor shall, upon receiving the list of nonattending children from the county superintendent of education, contact as rapidly as possible the parents or guardians of such nonattending children with the object in mind of interesting nonattending children in school work, and influencing them by means of persuasion to attend school regularly. All principals shall report to such attendance supervisor on continuous absences which appear to be unwarranted, and the attendance supervisor shall make an earnest effort to have enrolled and keep enrolled all children of school age in the county.

- **§ 59-65-90. Rules and regulations.** The State Board of Education shall establish regulations defining lawful and unlawful absences beyond those specifically named in this article and additional regulations as are necessary for the orderly enrollment of pupils so as to provide for uniform dates of entrance. These regulations shall require: (1) that school officials shall immediately intervene to encourage the student's future attendance when the student has three consecutive unlawful absences or a total of five unlawful absences and (2) that the district board of trustees or its designee shall promptly approve or disapprove any student absence in excess of ten days. As used in this section, "intervene" means to identify the reasons for the child's continued absence and to develop a plan in conjunction with the student and his parent or guardian to improve his future attendance.

*Provided, However,* That nothing within this section shall interfere with the Board's authority to at any time refer a child to a truancy prevention program or to the court pursuant to § 59-65-50.

## F. EDUCATIONAL NEGLECT

- **§ 20-7-490. (2)** "Child abuse or neglect", or "harm" occurs when the parent, guardian, or other person responsible for the child's welfare: (c) fails to supply the child with adequate food, clothing, shelter, or education as required under Article 1 of Chapter 65 of Title 59, supervision appropriate to the child's age and development, or health care though financially able to do so or offered financial or other reasonable means to do so and the failure to do so has caused or presents a substantial risk of causing physical or mental injury. However, a child's absences from school may not be considered abuse or neglect unless the school has made efforts to bring about the child's attendance, and those efforts were unsuccessful because of the parents' refusal to cooperate. For the purpose of this chapter "adequate health care" includes any medical or nonmedical remedial health care permitted or authorized under state law;

## V. **FEDERAL REQUIREMENTS DEALING WITH STATUS OFFENDERS**

### A. **JUVENILE JUSTICE DELINQUENCY PREVENTION ACT (JJDP ACT) REQUIREMENTS**

- The federal Juvenile Justice and Delinquency Prevention Act (JJDP Act) was passed by Congress in 1974 and has been amended on several occasions since then. To be eligible to participate in the JJDP Act and receive JJDP funds, states are required to develop and adhere to policies, practices, and laws which:
  1. deinstitutionalize status offenders (DSO), such as truants and runaways, and non-offenders, like abused and neglected children;
  2. separate adults and juveniles in secure institutions (sight and sound separation);
  3. eliminate the practice of detaining or confining juveniles in adult jails and lockups for more than a maximum of six hours, the maximum time allowed by statute for purposes of identification, processing, interrogation, transfer to a juvenile facility, court appearance or release to parents (jail removal). This federal jail removal exception includes a six-hour time period both immediately before and after a court appearance provided that the juvenile has no sight and sound contact with incarcerated adults during this time; and
  4. address efforts to reduce the disproportional representation of minority youth in secure facilities, where such conditions exist.

These four core requirements have been the major focus of states' federally funded efforts under the JJDP Act. If compliance is met, monies can fund other juvenile justice and delinquency prevention programs and services.

- §223(a)(12)(A) of the JJPD Act provides that juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult, excluding:
  1. juveniles who are charged with or who have committed a violation of section 922(x)(2) of title 18, United States Code, or of a similar State law;
  2. juveniles who are charged with or who have committed a violation of a valid court order; and
  3. juveniles who are held in accordance with the Interstate Compact on Juveniles as enacted by the State;shall not be placed in secure detention facilities or secure correctional facilities.

## **B. JJDP ACT FEDERAL “VALID COURT ORDER” CHECKLIST FOR STATUS OFFENDERS**

- For the purpose of determining whether a federal valid court order exception can be claimed, all of the following conditions must be present:
  - 1. Was the juvenile brought before a court of competent jurisdiction?
    2. Did the court order regulate future conduct of the juvenile?
    3. Did the juvenile receive adequate and fair warning of the consequences of violation of the order at the time it was issued?
    4. Was the warning provided to the juvenile and to his attorney and/or to his legal guardian in writing?
    5. Was the warning reflected in the court record and proceedings?
    6. Was there a judicial determination, based on a hearing, that there was probable cause to believe the juvenile violated the court order?
    7. Was the probable cause hearing held within 24 hours of the juvenile’s placement in secure detention, excluding weekends and holidays?
    8. Was the violation hearing conducted within 72 hours, excluding weekends and holidays?
    9. Prior to issuance of the court order, and during the violation hearing, were the following due process rights provided?
      - a. The right to have the charges against the juvenile in writing served upon him in a reasonable time before the hearing;
      - b. The right to a hearing before a court;
      - c. The right to an explanation of the nature and consequences of the proceedings;
      - d. The right to legal counsel, and the right to have such counsel appointed by the court if indigent;
      - e. The right to confront witnesses;
      - f. The right to present witnesses;
      - g. The right to have a transcript or record of the proceedings; and
      - h. The right of appeal to an appropriate court.
    10. At the violation hearing, did the judge determine that there is no less restrictive alternative appropriate to the needs of the juvenile and the community? This determination, if it results in a disposition of secure confinement (commitment to a secure facility), must be informed by a written report to the judge that reviews the behavior of the juvenile and the circumstances under which the juvenile was brought before the court and made subject to such order; determines the reasons for the juvenile’s behavior and, determines whether all dispositions other than secure confinement have been exhausted or are clearly inappropriate. This report must be prepared and submitted by a public agency other than a court or law enforcement agency.
- If all of the above conditions are present, and the juvenile status offender is found in a violation hearing to have violated a valid court order, the juvenile may be held in a secure detention or correctional facility, but not an adult jail or lockup. However, a nonoffender such as dependent or neglected child cannot be placed in a secure detention or correctional facility for violating a valid court order.



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# Overview of Requirements of & Recommendations for Those Dealing with Truants

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## PARENTS

- Parents are required to make sure their children attend school regularly. S.C. Code Ann. §59-65-10 (Supp. 1993).
- It may be considered educational neglect if:
  - (1) a child is accumulating unlawful absences, and
  - (2) the school's efforts to help the child attend regularly fail because of the parent's refusal to cooperate. S.C. Code Ann. §20-7-490 (2) (c) (Supp. 2002).

## SCHOOL OFFICIALS

- “The attendance supervisor shall, upon receiving the list of nonattending children from the county superintendent of education, contact ASAP the children's parents or guardians with intent of interesting the children in school work and persuading them to attend school regularly. All principals shall report to such attendance supervisor on continuous absences, which appear to be unwarranted, and the attendance supervisor shall make an earnest effort to have enrolled and keep enrolled all children of school age in the county.” S.C. Code Ann. §59-65-260 (1990).
- Once a child is deemed to be a “**truant**” (has three consecutive unlawful absences or a total of five unlawful absences):
  - school officials must:
    1. immediately intervene by identifying the reasons for the child's continued absence and developing a plan in conjunction with the student and his parent / guardian to improve his future attendance. S.C. Code Ann. §59-65-90 (1990).
    2. make every reasonable effort to meet with the parent(s) or guardian(s) to identify the reasons for the student's continued absence, to include phone calls and home visits, both during and after normal business hours, as well as written messages and e-mails. R. 43-274.
    3. develop a written “intervention plan” to address the student's continued absence in conjunction with the student and parent(s) or guardian(s). R. 43-274.
      - A consent order must not be used as an intervention plan from any local school or school district.
  - school officials may utilize a team intervention approach. Team members may include representatives from social services, community mental health, substance abuse and prevention, and other persons the district deems appropriate.
- Once a child is deemed to be a “**habitual truant**” (has failed to comply with the intervention plan and has accumulated two or more additional unlawful absences) pursuant to R. 43-274:
  - school officials may file an initial truancy petition as long as they have completed the written intervention planning with the parent(s) / guardian(s).

- If the parent(s) / guardian(s) do not cooperate with the intervention planning, the school district may refer the student to Family Court. The school district also shall file a report for educational neglect against the parent(s) / guardian(s) with DSS.
  - The written intervention plan and documentation of non-compliance must be attached to the truancy petition and served on the student and the parent(s) or guardian(s).
  - Informing parents and the child of the child's right to have legal representation is important at this point of the referral process.
  - The referral must also specify any corrective action regarding the student and/or the parent(s) or guardian(s) that the district recommends the court adopt as well as any other available programs or alternatives identified by the school district.
- Once a child is deemed to be a **chronic truant** (has been through the school intervention process, has reached the level of a "habitual" truant, has been referred to Family Court and placed on an order to attend school, and continues to accumulate unlawful absences) pursuant to R. 43-274:
    - school officials may refer the student to Family Court for violation of a previous court order.
    - The school and district must exhaust all reasonable alternatives prior to petitioning the Family Court to hold the student and/or the parent(s) or guardian(s) in contempt of court.
    - Any petition for contempt of court must include a written report from the school district indicating:
      1. the corrective actions / intervention plans that were attempted by the school district;
      2. what graduated sanctions or alternatives to incarceration are available to the court in the community; and
      3. its recommendation to the court should the student and/or parent(s) or guardian(s) be found in contempt of court.

## **DJJ COMMUNITY SPECIALISTS**

\*Currently, most DJJ county offices get involved when a child is referred to court for contempt of court for violating a court order to attend school.

- Review the case file to make sure everything required by the school district has been done and is included with the petition.
- Provide intake services to independently assess the circumstances and needs of children referred for possible prosecution. §20-7-7405 (Supp. 1976).
- Look into diversion options for the truant child.
- Coordinate with the school district to establish a system of graduated sanctions and alternatives to incarceration. R. 43-274 (E).

## **PROSECUTORS**

- Make sure school officials and DJJ have complied with all requirements listed above.
- Make sure that the written intervention plan and documentation of non-compliance were attached to the truancy petition and were served on the child and/or the child's parents prior to the initial truancy hearing when the judge placed the child under an order to attend school.
- Make sure the child has been afforded all his/her due process rights from the beginning of the process, especially during the initial hearing when the judge placed the child under a court order to attend school.

- Use a court order that qualifies as a “valid court order” for purposes of the federal “valid court order” exception.

## **DEFENSE ATTORNEYS**

\*Usually get involved with the case after the child is charged with contempt of court for violating a court order to attend school.

- Make sure school officials and DJJ have complied with all requirements listed above.
- Make sure that the written intervention plan and documentation of non-compliance were attached to the truancy petition and were served on the child and/or the child’s parents prior to the initial truancy hearing when the judge placed the child under an order to attend school.
- Make sure the child has been afforded all his/her due process rights from the beginning of the process, especially during the initial hearing when the judge placed the child under a court order to attend school.

## **JUDGES**

When a child is referred to court by the school for violating the compulsory attendance law:

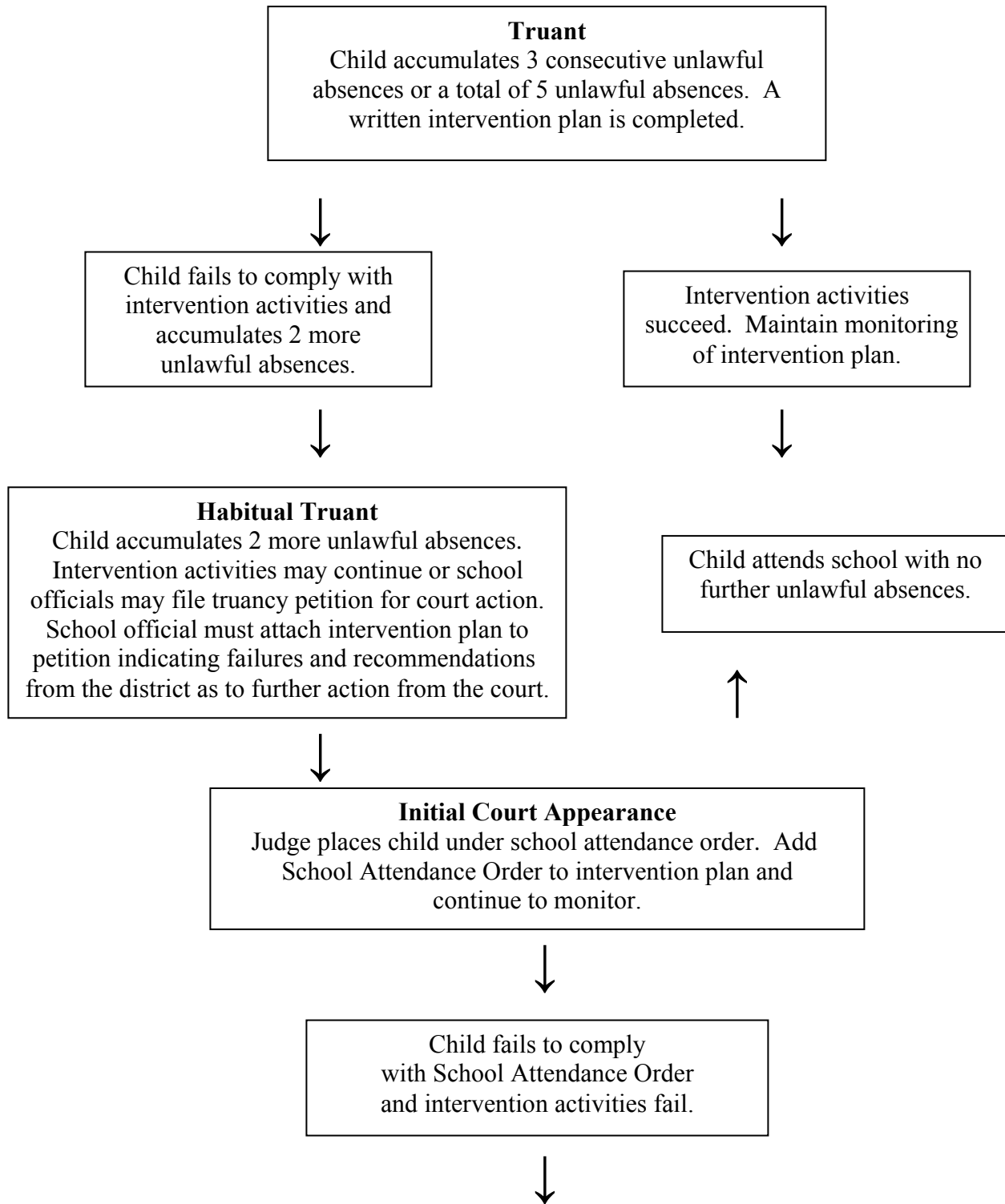
- Prior to hearing the case, make sure that the school officials have complied with all that is required of them by statute and R. 43-274.
- Make sure that the written intervention plan and documentation of non-compliance are attached to the truancy petition and have been served on the child and/or the child’s guardian.
- Make sure that the child is afforded all of his due process rights (both prior to and during the initial hearing).

When a child is referred to court for contempt of court for violating a court order to attend school:

- In order to use the federal “valid court order” exception, before sentencing a child to be securely detained for a status offense, the judge should make sure the federal requirements have been met for the issuance of a valid court order (see federal “valid court order” checklist), which basically protect the child’s due process rights.
- Pursuant to §20-7-7810 (F) the court may commit a child to the custody of DJJ or to a secure evaluation center operated by DJJ for a determinate period not to exceed ninety days only if:
  - the child is in contempt of court for violation of a court order to attend school or an order issued as a result of the child's adjudication of delinquency for a status offense; or
  - the child is determined by the court to have violated the conditions of probation set forth by the court in an order issued as a result of the child's adjudication of delinquency for a status offense, including truancy. Orders issued pursuant to this subsection must acknowledge:
    1. that the child has been advised of all due process rights afforded to a child offender; and
    2. that the court has received information from the appropriate state or local agency or public entity that has reviewed the facts and circumstances causing the child to be before the court.
- Pursuant to § 20-7-7415 (D), if the delinquency proceedings may result in commitment to an institution in which the child's freedom is curtailed, the judge should:
  - a. make sure that the child or the child's parents or guardian was given written notice of the charge or factual allegations to be considered at the hearing, sufficiently in advance to permit preparation;

- b. make sure that the child or the child's parent or guardian was advised in the notice of their right to be represented by counsel and that, if they are unable to employ counsel, counsel will be appointed to represent them; and
- c. in the hearing, inform the parent and child of their right to counsel and require them to consider whether they do or do not waive the right of counsel.

# Flow Chart of a Court Referral for Truancy



## Flow Chart of a Court Referral for Truancy, Cont.

